IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of Decision : 28th May, 2007

CM(M) No.1531/2006

Sh.Janak Dulari ..... PETITIONER
Through: MrBankey Bihari Sharma, Advocate

Versus

$ Sh.Suresh Kumar ..... RESPONDENT
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

1. Whether reporters of Local papers may be allowed to see the judgement? YES
2. To be referred to the reporter or not ? NO
3. Whether the judgment should be reported in the Digest? NO

ANIL KUMAR, J. (Oral)
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1. The petitioner has impugned the order dated 3.5.2006 of Additional Rent Controller, Delhi dismissing the application of the petitioner/landlord under Order 12 Rule 6 of the Code of Civil Procedure seeking an order of eviction under Section 14(1)(f) of Delhi Rent Control Act.

2. The petitioner contended that notice dated 5.10.2004 was given on behalf of respondent/tenant by his counsel Sh.Yoginder Gautam contending that the petitioner had constructed the remaining back portion of the shop by putting the lintels and the condition of the tenanted shop has become dilapidated. It was also pleaded that two stones of the chajja upon the chabutara fell on 2.10.2004 due to rains and that the level of back portion of the shop is higher from the floor level of the shop and the level of the tenanted shop is about 1.5 ft lower than the road level. Relying on these conditions of the tenanted premises it was demanded that repairs are necessary in the shop and the petitioner/landlord was asked either to carry out the repairs otherwise the repairs shall be carried out by the respondent/tenant himself. The respondent, however, did not spell out the exact nature of repairs required to be carried out in the premises demised to him and that the repairs could not be carried out without getting the premises vacated from him.

3. The petitioner/landlord, thereafter, filed the petition under Section 14 (1)(f) of the Delhi Rent Control Act which is as under:-

> "14(1)(f): that the premises have become unsafe or unfit for human habitation and are required bona fide by the landlord for carrying out repairs which cannot be carried out without the

premises being vacated."

4. In the petition filed by the petitioner under section 14 (1) (f) of Delhi Rent Control Act, 1958, an application under Order 12 Rule 6 of the Code of Civil Procedure was filed by the petitioner contending that since the fact that the premises requires repairs is not disputed, rather the respondent tenant in his notice has demanded that the repairs be carried out to the premises, therefore, on the basis of admissions made by the respondent, an order of eviction under section 14 (1) (f) of Delhi Rent Control Act, 1958 be passed in favor of petitioner and against the respondent. Reply to application was filed by the respondent who denied that an order of eviction can be passed against him on the application of the petitioner under Order 12 Rule 6 of the Code of Civil Procedure.

5. The learned Additional Rent Controller considered the contentions of the petitioner and the respondent and held that an order of eviction can be passed only if all the facts as prescribed under the Act are made out. The Additional Rent Controller also relied on Section 14(8) of Delhi Rent Control Act and held that in order to pass an order of eviction under Order 12 Rule 6 of the Code of Civil Procedure, the admissions made by the respondent/tenant must be clear, unequivocal and unconditional. The

Additional Rent Controller also held that in order to pass an order under Section 14(1)(f), there should be satisfaction of the Controller that proposed reconstruction will not radically alter the purpose of letting; even if there is such an alteration, it is in public interest; the plans and estimate of such reconstruction have been properly prepared and the landlord has necessary funds available with him for this purpose and consequently holding that these ingredients for an order under Section 14(1)(f) are not there, therefore, the order of eviction cannot be passed on the basis of an application under Order 12 Rule 6 of the Code of Civil Procedure.

6. This order has been challenged by the petitioner/landlord in the present petition. The grievance of the petitioner is that Section 14(8) is not applicable for the ground of eviction under Section 14(1)(f) of the Rent Control Act as the provisions of Section 14(8) are relevant in case of ground of eviction under Section 14(1) (g) of Delhi Rent Control Act, 1958.

7. Perusal of ground 14 (1)(g) reflects that a landlord can get the premises vacated if substantial addition, alteration or rebuilding of the premises is to be carried out for which the order of eviction cannot be finally passed unless the proposed reconstruction sought to be made by the

landlord is perused and considered by the Controller and the Controller is satisfied that it will not radically alter the purpose for which the premises were let out and that the remedial measures are in the public interest and the landlord have also put before the Controller for his satisfaction the plans and estimates of such reconstruction and that the landlord has necessary funds for the said purpose. Whereas for a landlord to get an order of eviction under Section 14(1) (f), he must establish that there is a relationship of landlord and tenant between the parties; that the premises demised has become unsafe and unfit for human habitation and that the premises are required bonafide by the landlord for carrying out the repairs and that the repairs cannot be carried out without premises being vacated.

8. No doubt there is a difference between the grounds (f) and (g) of Section 14 of Delhi Rent Control Act. For a petition to be decreed under Section 14(1)(f), therefore, necessity of making repairs in the premises which repairs can not be carried out without the tenant vacating the premises is a sine qua non. But for this the landlord has to establish that the repairs cannot be carried out without vacation of the premises and the premises is required bona fide by the landlord for carrying out the repairs and the landlord has to spell out the details of the repairs to be carried out by the landlord and

satisfaction of the Rent Controller. For every case of carrying out the repairs in the demised premises, it may not be necessary to evict the tenant and hand over the possession to carry out the repairs. Therefore, before a landlord can succeed to evict the tenant from the demised premises, there has to be satisfaction of the Controller based on the plea and evidence on the record about the nature of repairs and that such repairs are necessary and can not be carried out unless the premises is vacated by the tenant.

9. This is true that the Controller has considered the ingredients of ground of eviction under section 14 (1) (g) while dismissing the application of the petitioner under Order 12 Rule 6 of the Code of Civil Procedure to pass a decree on the basis of alleged admissions made by the respondent and not the ingredients of section 14 (1) (f) of Delhi Rent Control Act, 1958. Therefore, either this Court should remand the matter back to the Additional Rent Controller to consider the ground of Section 14 (1) (f) while deciding the application of the petitioner under Order 12 Rule 6 of the Code of Civil Procedure or to consider the pleas and contention of the parties, if there is any probability of the landlord succeeding in getting an order of eviction under section 14 (1) (f) of Delhi Rent Control Act, 1958 on the basis of alleged admission in the facts and circumstances.

10. Considering the facts and circumstances, it will be appropriate to consider, if even prima facie the landlord can succeed under section 14 (1) (f) of Delhi Rent Control Act, 1958 on the basis of alleged admission of the respondent/tenant. Though the present petition is under Article 227 of the Constitution of India and the power under Article 227 is intended to be used sparingly but the power may be exercised in cases occasioning grave injustice or failure of justice such as when (*i*) the court or tribunal has assumed a jurisdiction which it does not have, (*ii*) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (*iii*) the jurisdiction though available is being exercised in a manner which tantamount to overstepping the limits of jurisdiction."

11 From the perusal of the notice and the written statements filed by the respondent it cannot be culled that the respondent has agreed or admitted that the repairs cannot be carried out without getting the premises vacated from the respondent/tenant and that the petitioner requires the premises bona fide to carry out the repairs in the premises. The satisfaction of the Controller and the nature and extent of repairs can not be culled out or inferred from the notice and the written statement filed by the

respondent/landlord and there are no admission regarding these factors except that the repairs are to be carried out in the premises. There is no admission regarding the extent of and nature of repairs which are required in the premises demised. When the nature and extent of repairs to the premises have not been spelled out, a fortiori it can not be inferred that the alleged repairs can not be carried out unless the tenant vacates the premises.

12. It is no more *res integra* that before a court can act under Order XII Rule 6, admissions must be clear and unambiguous. When the admission is not clear and unequivocal and the pleadings of the parties raise serious preliminary pleas which are likely to non-suit a party, a court in its discretion can refuse to pass a decree. It can also be not disputed that the court is vest with discretion to ask for independent corroboration of a fact not specifically denied in the pleadings considering the peculiar nature of the facts and circumstances of the case. At the same time, the court can *suo moto* pass judgment under Order XII Rule 6 where the parties have conceded the rights of other parties. The admissions made in the pleadings have to be taken as a whole and not in part. The provisions of Order XII Rule 6 are discretionary and not mandatory and it is not incumbent on the courts in all cases to pass a judgment upon admission. Specially, if a case involves questions which

cannot conveniently be disposed of but an application under this rule or if the case is such that it is not safe to pass a judgment on admission, the court may in exercise of its discretion refuse the motion. In AIR 1986 SC 1509, Dudh Nath Pandey Vs. Suresh Chandra Bhattasali the Apex Court had held that the admission must be taken as a whole and it is not permissible to rely on a part of admission ignoring the other. In this matter, the appellate court had given a finding that the plaintiff's claim was barred by limitation and had dismissed the suit and plaintiff feeling aggrieved took up the matter to the High Court. This finding was, however, reversed by the High Court relying on an admission of the defendant in the written statement and the evidence of the witnesses produced on behalf of defendant. On merits, it was held that High Court was not right in relying upon the alleged admission, as the admission ought to have been taken as a whole and it was not permissible to rely on a part of the admission. In AIR 1971 SC 1542, Chikkam Koteswara Rao Vs. Chikkam Subbarao and others the Apex Court had held that the admissions must be clear in their meaning holding that before right of a party can be considered to have been defeated on the basis of an alleged admission by him, the implication of the statement made by him must be clear cut and conclusive. In 1997 (V) AD (DELHI) 627, Madhav Leasing Finance (P) Ltd. Vs. Erose Educational Infotech Pvt. Ltd. a single Judge of

this Court had held that a decree under Order XII Rule 6 cannot be passed unless the admission made is clear cut and unambiguous.

13. To pass a decree of eviction under section 14 (1) (f) of Delhi Rent Control Act, 1958 on an application under Order 12 Rule 6 of the Code of Civil Procedure, the petitioner has to rely on the averments made in the written statement and reply to the application filed by the respondent only. From the averments made in the written statement and the reply to the application, it cannot be inferred conclusively that there is a satisfaction of the Rent Controller that repairs required in the premises are of such nature which would require eviction of tenant from the premises. In the rent control proceedings it is not only the admissions which are sufficient for an order of eviction to be passed, as despite the categorical admissions, the satisfaction of the Rent Controller is also necessary. In the present facts and circumstances neither there is satisfaction of Rent Controller that the premises should be vacated by the respondent tenant for carrying out the repairs nor there are any such admissions which demonstrate that the respondent tenant had admitted that the repairs proposed by him are of such nature which will require vacation of premises by him.

14. In the circumstances the petitioner is not entitled for interference under Article 227 of the Constitution of India and an order of eviction can not be passed in favor of petitioner and against the respondent under section 14 (1) (f) of the Delhi Rent Control Act, 1958 on the application of the petitioner under Order 12 Rule 6 of the Code of Civil Procedure. The petition, therefore, require no interference and it is therefore, dismissed. Parties to bear their own costs.

May 28, 2007 **ANIL KUMAR, J.**
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